

STATE OF SOUTH DAKOTA
DEPARTMENT OF HUMAN SERVICES
FOOD AND DIETARY SERVICES AGREEMENT

Elior, Inc.
dba Cura Hospitality, LLC
300 S. Tryon Street Suite 400
Charlotte, NC 28202

State of South Dakota
Department of Human Services
South Dakota Developmental Center
Hillsview Plaza, East Highway 34
c/o 500 East Capitol
Pierre, SD 57501-5070

Referred to as Contractor

Referred to as State

Facility: Cura Hospitality, LLC will provide services at the South Dakota Developmental Center, Redfield, South Dakota (SDDC).

1. **Term of Agreement:** The effective date of this contract is July 1, 2019. The term of the Agreement shall be one year, beginning July 2019, with the option to renew, in one (1) year increments, for four (4) additional one (1) year extensions at the State's discretion and by mutual agreement of the parties.
2. **Purpose of Agreement:** The purpose of the agreement is to provide for food service activities at South Dakota Developmental Center, Redfield S.D. (SDDC). SDDC (the facility) is a Medicaid certified residential Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) which serves individuals with developmental disabilities when community-based options are not available.
3. **Performance Security Deposit:** The Contractor must furnish a performance security deposit in the form of an original bond issued by a surety company authorized to do business in the State of South Dakota (copies or facsimiles shall not be acceptable), check, cash, bank draft, to the Bureau of Administration, Office of Procurement Management within thirty (30) days after award of the contract and prior to performance of service under the contract or any installation of equipment. The performance security deposit must be made payable to the State of South Dakota in the amount of \$500,000, United States currency. Only one Performance Security Deposit in the amount of \$500,000 will be required of the Contractor to cover all contracts between the State of South Dakota and the Contractor. If the Contractor fails to perform on any single contract, the Performance Security Deposit will remain in effect for the remaining contracts the Contractor has with the State of South Dakota. The contract number and contract period must be specified on the performance security deposit. In the event the State of South Dakota exercises an option to renew the contract for an additional period, the Contractor shall maintain the validity and enforcement of the security deposit for the said period, pursuant to the provisions of this paragraph.

The performance bond shall provide that in the event of non-renewal of the performance bond, the State and the Contractor be notified in writing by the issuer a minimum of sixty (60) days prior to the anniversary of the effective date of the contract. In the event of non-renewal, the Contractor shall provide the State evidence of the new scope of surety within twenty-one (21) calendar days after the State's receipt of the non-renewal notice. Failure to maintain the required surety in force during the entire contract period may be cause for contract termination.

4. **Payment to Contractor:** Unless otherwise negotiated and agreed upon by the parties, The State will make payment in compliance with the Prompt Payment Act, SDCL 5-26 for services provided under the contract.
5. **Indemnification:** The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other

proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents and employees.

6. Insurance Requirements: The Contractor shall bear the full and complete responsibility for all risk of damage or loss of equipment, products or money resulting from any cause whatsoever and shall not penalize the State for any losses incurred related to the contract.

- a. The Contractor, at all times during the term of the Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
 - A. Commercial General Liability Insurance: The Contractor shall maintain occurrence based Commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence and \$1,000,000 aggregate.
 - B. Worker's Compensation Insurance: The Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.
 - C. Automobile Liability (including hired/non-owned) - Combined Single Limit of \$500,000.

Before beginning work under the Agreement, the Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new Certificate of Insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of the insurance policies if requested by the State.

b. Remodeling and Renovation

The insurance requirements above are required to be in effect during the course of any remodeling, renovation, or construction done by or at the direction of the Contractor.

- A. Upon notification of award and prior to issuance of a contract, the Contractor shall provide the State a current certificate of insurance with the required kinds and limits of insurance issued by an insurance company licensed to do business in the State of South Dakota and signed by an authorized agent.
- B. Commercial General Liability includes but is not limited to consumption or use of products, existence of equipment or machines on location and contractual obligations to customers. The Contractor shall bear the full and complete responsibility for all risk of loss of premises or damage to equipment or products resulting from any cause, including that of sub-contractors, and shall not penalize the State for any losses incurred related to the contract.
- C. These policies shall contain a covenant requiring sixty (60) days written notice by the insurer to the State Purchasing Office before cancellation, reduction or other modifications of coverage. The insurance certificate shall be for the initial contract period of one (1) year and shall be extended by the Contractor for each subsequent renewal period of the contract. The Contractor shall advise each insuring agency to automatically renew all policies and coverage in force at the start of and resulting from the contract until specified coverage requirements are revised.
- D. In the event of non-renewal, cancellation or expiration of insurance, the Contractor shall provide the State evidence of the new source(s) of required insurance within twenty-one (21) calendar days after the State's receipt of the sixty (60) day notice. In the event the Contractor fails to maintain and keep in force the insurance herein required, the State shall have the right to cancel and terminate the contract without notice.

- 7. Independent Contractor:** While performing services under agreement with the State, the Contractor is an independent Contractor and not an officer, agent, or employee of the State of South Dakota.
- 8. Reporting Injury or Death:** Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury, or death, to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery. Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirement of any applicable law.
- 9. Renewal Options:** The Agreement may be renewed under the same terms and conditions in one (1) year increments, for four (4) additional one (1) year extensions at the State's discretion and by mutual agreement of the parties. Notice of intent to renew shall be given by the State to the Contractor within 120 days of the end of the current contract term. If the notice of intent to renew is given, the Agreement shall renew upon acceptance by the Contractor, unless terminated by either party pursuant to the Termination Provision of the Agreement.
- 10. Termination Provision:** This agreement may be terminated by either party hereto upon thirty (30) days written notice and be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.
- 11. Non-Appropriation of Funds:** The Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the intended purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
- 12. Severability:** In the event that any provision of this agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 13. Conflict of Interest:** Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Consultant expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18-A-17 through 5-18A-17.6.
- 14. Assignment of Contract:** The Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part thereof and be signed by an authorized representative of each of the parties thereto.
- 15. Governing Law:** The Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any lawsuit pertaining to or affecting the Agreement shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- 16. Compliance with Laws:** The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to the Agreement, and will be solely responsible for obtaining current information on such requirements.
- 17. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** Contractor certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the

federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State, if during the term of this Contract, the Contractor or its principals become subject to debarment, suspension, proposed for debarment, or declared ineligible from participating in transactions by the federal government, or by any state or local government department or agency.

- 18. Unenforceable Provisions:** In the event that any court of competent jurisdiction shall hold any provision of the Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision thereof.
- 19. Prior Discussions:** All other prior discussions, communications and representations concerning the subject matter of the Agreement are superseded by the terms of the Agreement, and except as specifically provided therein, the Agreement constitutes the entire agreement with respect to the subject matter thereof.
- 20. Communications Between Parties:** Any notice or other communication required under the Agreement shall be in writing and sent to the appropriate address and individuals indicated in the Agreement, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
- 21. Use of Subcontractors:** The Contractor may not use subcontractors to perform the services described in the Agreement without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of the Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with the Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
- 22. Excused Performances:** If, because of riots, war, public emergency or calamity, fire, flood, earthquake, act of God, government restriction, or labor disturbance or strike, business operations at the State are interrupted or stopped, performance of the contract, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence. The expiration date of the contract may be extended for a period of time equal to the time that such default in performance is excused.
- 23. Adjustments to the Contract:** After the initial contract year, the parties upon mutual agreement may adjust the specific terms or guarantees of the contract. All adjustments shall be proposed in writing to the State for approval prior to becoming effective.
- 24. Use of Space:** The State permits the Contractor to use such spaces as necessary to carry out the terms of the contract. Such spaces, as defined by the State, include areas for manual food service equipment and limited supplies. Subsequent modifications of space needs shall be subject to mutual agreement of the State and Contractor. The State shall provide heat, air conditioning, sewer, electricity, steam, and cold/hot water. The Contractor agrees to exercise care to keep these energy services to a minimum and comply with established energy conservation practices, regulations and policies, and mutually endeavor to conserve the use of energies.
- 25. Right of Inspection:** The State shall have the right of inspection of all manual food areas, dining facilities, storage and auxiliary service rooms and the operation of the Contractor with respect to the quality and quantity of manual food service, the method of service, opening and closing hours, and generally with respect to use, safety, sanitation and the maintenance of said premises. All areas shall be maintained at a level satisfactory to the State. The State shall have the right to establish reasonable regulations from time to time with regard to such matters and the Contractor agrees to comply with such regulations. Authorized representatives of the State, or their designees, auditors of the United States Department of Agriculture (USDA) and the Comptroller General of the United States and the South Dakota Department of Human Services' independent auditors shall have access to all such records for audit and review upon request at a

reasonable time and place for making audit, examination, excerpts, and transcriptions. Authorized representatives of the South Dakota Department of Human Services (DHS) and the USDA shall have the right to conduct on-site administrative reviews of the food service program.

- 26. Regular Meetings on Performance:** Recognizing that the successful performance of the contract is dependent on favorable response from the users, the Contractor shall meet at least quarterly or more often if required by the facility administrator to effect adjustments in operations and shall cooperate at all times to maintain maximum efficiency and good public relations with residents and staff.
- 27. Permits/Licenses/Bonds:** The Contractor shall be financially responsible for obtaining all required permits, licenses and bonds to comply with pertinent municipal, county, state, and federal laws and regulations. The Contractor shall assume liability for all applicable taxes including, but not restricted to, sales, use and property taxes.
- 28. Contractor Furnished Items:** The Contractor shall furnish all commodities, supplies and other necessary equipment herein specified and all management and labor necessary for the efficient, sanitary and economically sound operation of the specified services included in the contract, and any subsequent extensions or amendments.
- 29. Facilities and Equipment:** Upon termination or expiration of the contract, the Contractor shall vacate the premises and deliver up the premises in the same condition that the premises were in at the time the Contractor entered the premises thereunder with reasonable use and wear expected. The State, at its option, shall retain intact leasehold improvements or require that the Contractor remove such leasehold improvements within thirty (30) days from termination or expiration of the contract. The Contractor shall, at its sole expense, repair any damage to the premises caused by such removal.
- 30. State Supplemental Food Service:** The State may supplement the manual food service in the contract with other means of dispensing food and beverage items by additional manual or vending food service as determined by the State.
- 31. State Supplied Office Equipment:** The State shall provide the following existing office furniture and equipment for use by the Contractor in the performance of the contract at no charge under the same terms applicable to capital equipment contained in the contract: desks, chairs, filing cabinets, and other equipment as negotiated. The State may provide computer access necessary for the Contractor to efficiently carryout food service operations. This shall be limited to the minimum amount of equipment and information necessary to complete the required duties as negotiated between the facility administrator or designee and the Contractor.
- 32. Office of Inspector General Exclusionary List Requirements:** Consultants, who utilize federal Medicaid funds agree to screen all employees and contractors, prior to hiring or contracting on a regular basis, to determine whether any of them are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities. Consultant shall maintain documentation to support the screenings were performed and shall immediately report to DHS all cases in which employees are found on the exclusionary list. Consultant understands that no payment shall be made for any goods or services furnished, ordered, or prescribed by an excluded individual or entity and any payment made for services provided by excluded parties will be recouped; and recoupment may include penalties.
- 33. Advertising:** The State shall approve in writing all design, advertising, and/or lettering of textile, polystyrene or paper goods such as paper cups, plates, napkins, prepackaged condiments, matches, menus and similar items, prior to purchase of items by the Contractor. The Contractor shall use recyclable packaging materials, cups, sick tray containers, plates, and similar items when possible.
- 34. Personnel:** Staff employees shall be on duty for the efficient, prompt and sanitary service of food based upon the agreed upon staffing plan. Deviations from the staffing plan will require written notification to the facility and subject to its approval. Failure to meet the staffing plan could result in liquidated damages as defined in Section 30.F. An adequate staff of employees shall also be in place to guarantee the efficient

and accurate handling of financial records. The Contractor shall provide adequate Registered Dietician staffing to meet state and federal requirements. The dietician shall visit the facility not less than quarterly for quality control and adherence to standards. These visits shall be documented, and a written report issued to the facility.

All personnel must have PPD yearly, Rubella and Rubeola screening, and shall have a record of a second MMR on file or have positive titer Rubella and Rubeola on record. The facility may determine if additional physical health requirements are necessary.

Background investigations will be required of all new employees prior to their assignment at SDDC. The Contractor shall immediately notify the facility administrator or designee of any new hires, disciplinary action or terminations of staff.

A. Management Assignment/Requirements

The Contractor's food service director (also known as "Certified Dietary Manager") assigned to the facility shall be subject to the approval of the State.

The individuals initially selected for these positions may not be transferred within one year following their appointment without prior approval of the State unless they have terminated by the Contractor. The food service directors assigned to the State shall not be changed more than once per year unless mutually agreed and not without thirty (30) days advanced notice and replacement selection made is acceptable to and mutually agreed by the State, unless they have been terminated by the Contractor. Positions shall not remain vacant for a period to exceed thirty (30) days. Should positions remain vacant for a period to exceed 30 days, liquidated damages may be assessed under Section 30.F.

The food service director shall have the full authority to work with designated representatives of the State. The director shall have a demonstrated proficiency with maintaining a sanitary food service operation, menu development, internal accounting and controls, financial management, and personnel management and supervision. Candidates with a college degree and experience in correctional, healthcare and/or institutional food services in increasingly responsible positions are desired.

The food service director shall be certified/licensed as a food service manager in any facility requiring a certification or licensure for operation of said food service. The food service director shall make at least monthly inspections of food delivery sites to ensure standards are being met. These inspections shall be documented for quality control purposes.

B. Contractor Contact People

The Contractor shall identify headquarters management staff by name that shall routinely review and inspect operation, fill staff vacancies, consult with the State on current and future food service programs, and act with full authority on the Contractor's behalf in any and all matters pertaining to the specifications of the contract.

C. Personnel Relations

Personnel relations of employees on the Contractor's payroll shall be the Contractor's responsibility. The Contractor shall comply with all applicable government regulations related to the employment, compensation, and payment of personnel. The Contractor shall provide the facility with the training guidelines that will be utilized for each employee classification. All employees of the Contractor must complete the training required by the facility that is pertinent to food service personnel.

Personnel of the Contractor shall observe and be subject to all regulations of the State. Failure to do so may be grounds for the State to recommend dismissal from this account. In the event that the State is not satisfied with the services provided by the Contractor's Certified Dietary Manager and cannot

resolve the issues, then funds that are provided by the State of South Dakota shall be deducted from the contract and the State will contract for their own Dietary Manager position.

D. Staff Listing

The Contractor shall supply the State with a complete list of employees, supervisors, and management, including trainings, certifications and/or licensures held by each, assigned to work areas at the start of the contract and as frequently thereafter as requested by the State. The list shall be reviewed annually and at any time during the year by the State.

E. Area Security

The Contractor's staff shall open, close and check State food service facilities as instructed and required by the State. State shall furnish instructions and initially train Contractor's full-time managers in approved procedures.

F. Liquidated Damages

The Contractor shall meet the requirements of the staffing plan agreed to by the Contractor and the State. Failure to meet the staffing requirements may result in liquidated damages. The amount of liquidated damages shall be calculated based upon the salary of the incumbent staff in the position times the number of hours and shifts that the staffing plan was not met plus 10 percent. This shall apply to each staff member not meeting the staffing plan.

Should Contractor staffing positions remain vacant for longer than 30 days, liquidated damages may be assessed. The amount of liquidated damages shall be calculated based upon the number of days the position was vacant times the salary of the previous employee in the position plus 10 percent.

Liquidated damages will be reviewed on a monthly basis and assessed accordingly.

35. Equipment and Supplies

State Supplied Equipment

The State shall provide the Contractor with an initial physical inventory of supplies (i.e., hand utensils, cleaning equipment, trays, pans, pots, dishes, glasses, silverware, etc.) and capital equipment at the start of the contract. Depletion of supplies shall be replaced to existing standard operational levels by the Contractor at its expense semiannually and on completion or termination of the contract. The specifications for these items shall be arrived at, in writing, by mutual agreement between the Contractor and the facility administrator or designee. The facility will provide all adaptive equipment needed for resident cares. These include, but are not limited to weighted or molded silverware, red glasses (for contrast with macular degeneration), sectioned plates, and nosey cups.

The Contractor shall confirm arrangements for replacement and/or make payments by the 15th day of the month following the determination of inventory shortages or termination or expiration of the contract. The State shall maintain an up-to-date physical inventory record of supplies and capital equipment during the life of the contract. Additional new items or increased inventory level requirements shall be provided by the Contractor to meet obligations of the contract through the appropriate purchasing authority and authorized funding procedures. The Contractor shall not purchase items for use at the facility anticipating the State to purchase these items at some future date.

At the start of the contract, the State and Contractor shall conduct joint physical inventories of all supplies and capital equipment. At that time, the extent of repair and replacement shall also be determined by the State. On completion and acceptance of these inventories by the Contractor, the Contractor shall assume the responsibility for the equipment under the terms of the Contract.

The Contractor shall provide to the facility a three-year equipment replacement plan by August 1 of each fiscal year. Provided, however, that the State shall be responsible for the cost associated with the repair and replacement of such equipment, except as set forth in the Repair and Replacement provision below.

State Supplied Office Equipment

The State shall provide the following existing office furniture and equipment for use by the Contractor in the performance of the contract at no charge under the same terms applicable to capital equipment contained in the contract: desks, chairs, filing cabinets, and other equipment as negotiated.

Other Equipment

Other equipment not provided by the State that the Contractor deems necessary may be provided by the Contractor at its own expense. Said equipment and installation shall require prior approval of the State. With respect to equipment provided by the State, the State makes no implied or express warranties, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. However, the Contractor shall have the benefit of any warranty or guarantee given the State by the manufacturer or the seller of the equipment.

Ownership and Removal of Supplies and Equipment

Ownership of all non-expendable supplies and capital equipment shall remain with the State and shall not be loaned or removed from the facilities without prior written approval. The Contractor shall take such measures as may be reasonably required by the State for the protection against loss by pilferage or destruction.

Leased Equipment

The Contractor shall make contracts for and payments on all leased rental food services related equipment.

Purveyor Owned Equipment

Purchase of products (food or supplies) which require equipment for their dispensing and have the equipment and service costs prorated in the cost of their product may be purchased for use at the State facilities without prior approval of the State.

Repair and Replacement

If food service equipment or other State property is damaged as a result of negligence by Contractor, its employees or agents, and the State determines that the equipment must be replaced, Contractor shall reimburse the State for the full costs of replacement.

Sale of Food and Supply Inventory

On expiration or termination of the contract, the inventories of food, equipment and supplies of the Contractor shall remain those of the Contractor unless purchased by the new Contractor. Arrangements for removal or assumption of these inventories shall be completed by the start of the new contract.

Surplus

The Contractor has the responsibility to consult with the State on the disposition or use of excess capital, expendable or nonexpendable food service supplies and equipment. The disposition or

declaration as surplus shall be the responsibility of the State and in accordance with State inventory control procedures.

36. Space Use

Food Service Areas

The Contractor may utilize all space assigned by the State for food service operations.

Use of Non-Food Service Areas by Contractor

When the Contractor uses areas that are not primarily intended for food service (e.g., meeting rooms and lounges) for such purposes as may be required, appropriate setup and teardown shall be undertaken by the State. The Contractor shall be responsible for cleanup which shall involve maintenance and sanitation of the areas, furniture rearrangement and equipment and trash removal. When the Contractor caters beverages and snacks in a meeting room, the Contractor is responsible for prompt removal of food equipment and food residue from the area following completion of the meeting. When the Contractor uses regular food service dining areas and arrangements for setup are required, appropriate setup and breakdown shall be undertaken by the Contractor. The Contractor shall be responsible for cleanup and floor maintenance. The Contractor shall not use non-food service areas for purposes other than State business.

Use of Dining and Service Areas by State

The State may, without interfering with normal food service, use the dining and service areas from time to time for other purposes. Appropriate setup and cleanup shall be undertaken by State personnel at no cost to the Contractor. Facilities shall be restored to conditions mutually satisfactory to the Contractor and the State before the next regularly scheduled meal service. Restoration shall involve maintenance and sanitation to the areas, dining and service equipment, and trash removal.

Facility Security

The Contractor is responsible for control of keys/key card obtained from the State and the security of those areas that are used by its representatives. Designated employees of the Contractor shall be responsible for ensuring that all equipment has been turned off, windows closed, lights and fans turned off, and doors locked. The Contractor shall be responsible for immediately reporting all the facts relating to losses incurred as a result of break-ins to areas to the State. The State shall designate the authority to receive these reports and be responsible for key control.

The State and Contractor shall mutually determine the additional security measures required to control unauthorized access to all food service areas included in the contract. The State and Contractor shall mutually determine their responsibilities for the cost to provide initial and future additional security.

Lock/Cylinder/Key Installation and Replacement

The Contractor shall be responsible for the cost for replacement of lost keys/key cards and the cost of re-keying, replacement of lock cylinders and card readers required as a result of its negligence and/or loss of keys/key cards. The Contractor is responsible for the purchase of padlocks and other security devices not currently provided by the State that may be required by the Contractor to further ensure revenue, product or property security within the food service areas.

State Security

The State shall provide the Contractor with safety and security services currently available to food service, such as door checks, access control, and networked video surveillance.

If the Contractor requires additional security, it shall be provided by, or coordinated through, the State for which the Contractor agrees to pay prevailing charges. The Contractor shall follow the State's policies in dealing with improper conduct and shall report all incidences to the State. Emergency calls shall be reported to the State as promptly as possible.

37. Utilities

The State will provide all utilities necessary for normal food service operations.

Uninterrupted Service

The State will not guarantee an uninterrupted supply of water, steam, electricity, gas, heat, or high/ low temperature refrigeration. However, the State shall use its best efforts to restore services following an interruption. The State shall not be liable for any product loss that may result from the interruption or failure of any such utility services or equipment. Scheduled outages by the State will be coordinated through the Contract Administrator.

Loss of functionality due to Contractor negligence will be the cost responsibility of the Contractor and repair to systems resulting from negligence will be the cost responsibility of the Contractor.

38. Equipment and Facility Maintenance, Replacement and Sanitation

Cleanliness and Sanitation

The Contractor shall adhere to the highest standards of cleanliness and sanitary practices to ensure continual sanitation in all functions of matters related to the execution of the terms of the contract including food handlers' appearance and performance in the preparation, service, transport, and storage of food and related items.

Safety Requirements

All materials, equipment and supplies provided by the State and Contractor must comply fully with all safety requirements as set forth by the South Dakota Administrative Code, and all applicable OSHA Standards. During the course of the contract, the Contractor is fully liable for public and private protection while work is in process at any site identified as a potential hazard. The Contractor must provide prominently displayed warning devices and/or signs that are in compliance with the safety regulations.

All hazardous conditions, physical surroundings, or fire shall be reported immediately to the State. Verbal reports will be followed with written reports by the Contractor within twenty-four (24) hours listing details of the posted hazard.

With the full cooperation of the State, an accident prevention and safety education program shall be instituted by the Contractor. Proper instructions and training shall be provided on the use of equipment and techniques of handling food to aid in the goal of having an accident free and safe environment. Employees are to be trained by the Contractor on where to find safety equipment and how to use such equipment. All injuries and accidents are to be reported to the State the day they occur.

Facility Inspections

Agents of the State Department of Health and other applicable state and federal agencies shall have complete cooperation and access to all food service, production and storage areas and records for inspections that they may conduct. These inspections may be conducted unannounced, at the request of the State or at said agency's own discretion. Contractor shall be required to have a Department of Health inspection grade higher than 85% or be penalized \$500 for each percent below 85%. A management representative of the Contractor shall conduct equipment and facility's maintenance and

sanitation inspections periodically, as determined by mutual agreement. Supplier representatives who normally provide equipment and product inspections and reports as part of their services shall be encouraged to perform frequent inspections and shall furnish a copy of each report to the State and Contractor. The Contractor is responsible to implement corrective operating measures required as a result of these inspections and report within ten days of notification and by mutual agreement of the State to meet or exceed Department of Health or other regulatory requirements.

Should the Contractor fail to meet the sanitation standards required by the contract or of any agency having jurisdiction, or fail to comply with the State rules and regulations concerning protection from fire or general safety, the State reserves the right to hire outside Contractors to perform the necessary work or have the work done by State personnel, and, in either case, charge back the Contractor at actual labor and materials costs plus twenty-five (25) percent of the labor and materials total cost. The State reserves the right to withhold payment for services not rendered by the Contractor as set forth in the contract.

Contractor Responsibilities

The Contractor shall provide required housekeeping, and sanitation service on the equipment and supplies for all food service equipment and areas. This shall include, but not be limited to, production areas, serving kitchens, refrigerators, freezers, storage areas, and dining and service areas regularly used by food service as well as areas temporarily assigned for food service.

Stripping and Sealing of Floors

The Contractor shall be responsible for the semi-annual stripping, sealing, waxing and deep cleaning of floors in the food service areas. In the event the Contractor fails to maintain adequate floor maintenance, the State reserves the right to hire outside Contractors to perform the necessary work or have the work done by State personnel, and, in either case, charge back the Contractor at actual labor and materials costs plus twenty-five (25) percent of the labor and materials total cost.

Pest Control

The Contractor shall be responsible for the costs and maintenance of insect and pest control in all food service, production and storage areas. In the event the Contractor fails to maintain adequate pest control, the State reserves the right to hire outside Contractors to perform the necessary pest control work or have the work done by State personnel, and, in either case, charge back the Contractor at actual labor and materials costs plus twenty-five (25) percent of the labor and materials total cost.

Food Service Linens and Uniforms

The Contractor shall provide an adequate inventory of table linens, employee uniforms, aprons, jackets, towels, bar swipes, pot holders, and such other related food service linens. The Contractor shall be responsible for the laundry service, dry cleaning, repairing, and maintaining an adequate inventory of these items. Selection of employee uniforms shall be mutually agreed upon by the State and the Contractor.

Trash Removal

Applicable state, county and municipal recycling and waste disposal requirements shall be adhered to. The Contractor shall be financially responsible for costs of removal of trash and garbage from food service and production operations to remote dumpsters. The State shall be financially responsible for the costs of removal of exterior trash from the campus facilities.

Waste Containers

The Contractor shall provide waste containers within food service and production areas in sufficient quantity to maintain sanitary standards for trash disposal. The Contractor shall provide trash bag liners

as needed. Waste containers shall be kept in a clean and satisfactory condition at all times and emptied by the Contractor.

First Aid Equipment

The Contractor shall be responsible for the costs of first aid equipment and supplies in all production and food service areas.

Fire Extinguisher System

The State shall furnish and maintain fire extinguisher equipment and supplies, including automatic hood extinguisher systems.

Hood Ducts and Vent Cleaning

The Contractor is financially responsible for the cleaning of hood ducts, plenums and related vents and fans. SDDC is responsible for scheduling the cleaning of hood ducts, plenums and related vents and fans. The Contractor shall be responsible for routine cleaning and maintenance of hoods and filters. Cleaning and maintenance shall be performed at least semi-annually.

39. Statements, Audits, Payments, and Billings

Monthly Billings

The State will bill the Contractor on a monthly basis for State services and equipment utilized by the Contractor including but not limited to: copies, supplies, postage, etc. The Contractor shall pay the state within thirty (30) days of invoice date.

Reporting Period

The Contractor's year-to-date reports shall correspond with the State's fiscal year, July 1 through June 30. A month shall be a calendar month. A week shall run from Saturday through Friday. Contractors with manual food service at more than one State facility shall provide period statements that are uniform for each type of service at the facility as nearly possible as the terms of each contract specification permit. Electronic reporting is required.

Review of Operating Statements

Upon request of the State, the Contractor shall meet with the State and review each operating statement, explain deviations, discuss problems, and mutually agree on courses of action to improve the results of the required services included in the contract. Operating statement adjustments required as a result of review and/or audit shall be identified and reflected on the next period statement.

Record Retention/ Audits

A. Retention and Inspection of Records: The Contractor agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the food service operation, including records and documents regarding the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Contractor shall retain such records for a period of six years from the close of each year's operations. If such records are under pending audit, the Contractor agrees to hold such records until such time as the audit is resolved or a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to food service operations rendered under this contract. All payments to the Contractor by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this contract shall be returned to the State within thirty (30) days after written notification to the Contractor.

- B. Audit Requirements: The Contractor agrees to submit to the State a copy of an annual entity-wide, independent audit conducted by an independent certified public accounting firm in accordance with Generally Accepted Accounting Principles (GAAP). The audit shall be filed annually with the Bureau of Administration within a month after completion of the audit.

Bureau of Administration
Office of Procurement Management
523 E. Capitol Avenue
Pierre, SD 57501-3182

If federal funds of \$500,000 or more have been received by the Contractor, the audit shall be conducted in accordance with OMB Circular A-133 by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the South Dakota Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited. For an A-133 audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
c/o 500 East Capitol Avenue
Pierre, SD 57501-5070

For either an entity-wide, independent audit or an A-133 audit, the Contractor assures resolution of all interim audit findings.

The State's representative or selected auditors may annually, or more often if deemed necessary, examine all financial and operational phases of the Contractor's services. Periodic reviews, conducted jointly by representatives of the State and the Contractor, shall be made to ensure that the staffing pattern, menu pricing structure and other phases of the operation are conducted in a manner that will provide the best value to the State. The purpose of the review is to ensure that the State is provided with quality, convenient food service, under sanitary and healthful conditions, at the most reasonable prices possible.

The State, to the extent authorized under SDCL Chapter 1-27, will maintain the confidentiality of Contractor's revenue and expense statements, audit and related financial information obtained under this subsection.

Purchases and Expenses

- A. The taxes or costs described below which are applicable are components of the financial consideration of the contract.
- B. Payroll taxes for the Contractor's employees shall be paid by the Contractor to the appropriate Federal, State and local authorities.
- C. Licenses and permits, such as health and food service permits, shall be paid by the Contractor to the appropriate State and local authorities.
- D. All purchases of non-food supplies except certain disposable one-time use containers resold with meals, for use in the performance of the contract are subject to the State sales and use tax and Contractor shall pay the tax to the supplier or to the proper government agency.

Other Services and/or Sales

Sales tax applies to all direct sales of meals to employees and visitors. The Contractor is responsible for obtaining the proper South Dakota tax licenses and for collecting and remitting the appropriate sales tax to the Department of Revenue and Regulation.

- 40. Contractor Tax Delinquency:** Contractors who have delinquent South Dakota tax liability may have their payments offset by the State of South Dakota.
- 41. Recycled Materials:** The State of South Dakota has a commitment to encourage the purchase of recycled materials whenever technically or economically feasible or required by law. Contractor is encouraged to use recycled materials.
- 42. Material Safety Data Sheet:** If any item(s) resulting from this award is a hazardous chemical, as defined under 29 CFR 1910.1200, the Contractor must provide one (1) copy of a Material Safety Data Sheet for each item to the State for approval prior to use, including reformulated chemicals.
- 43. Procurement of Food:** The Contractor shall maintain rigid procurement procedures throughout the entire process of purchasing, receiving, storage, and inventory of all foods and direct supplies and shall pay for all food and direct supplies related to food production, service and management applicable to the contract.
- 44. Compliance with U.S. Grades:** All food and supplies purchased shall be in conformance with the specified minimum U.S. Standards for Grades. In the absence of grade labeling, the Contractor shall provide the State with packers' labeling codes or industry accepted grade equivalent standards to verify the minimum grades specified are being provided. The State shall periodically, or as necessary, inspect the Contractor's inventory of food and supplies to determine that purchase standards are maintained. Grade minimum for food items shall be as follows:
- Meat - USDA No. 1 or choice, cut to IMP specifications. Please note South Dakota forbids the use of any imported beef in State institutions.
 - Seafood - U.S. Grade A, certified
 - Poultry - U.S. Grade A
 - Eggs - U.S. Grade A medium size
 - Pure ground beef - USDA utility or better, not to exceed 18% to 22 % fat
 - Fresh fruits, vegetables - USDA Grade A
 - Canned fruits, vegetables, juices - USDA Grade A
 - Frozen fruits, vegetables, juices - USDA Grade A
 - Dairy products, cheese - USDA Grade A
- In addition to the above, all other food products must be top quality. No substitutes will be allowed to be utilized in recipes.
- 45. Use of Natural, Low Fat Products:** The Contractor shall use natural, low fat products whenever possible. Natural, low fat processed cheeses may be used for cooking purposes. Tropical oils may not be used by the Contractor for cooking purposes.

- 46. Meat Cuts:** All meat cuts shall be in accordance with USDA IMP specifications. These grades are intended as minimum standards only and the Contractor is encouraged to exceed these minimums whenever possible. All other food stuffs not included in the above categories shall be of comparable quality.
- 47. Meat Content:** Ground beef patties may contain a maximum fat content of the finished raw patty of 18% to 22%. All menu items prefabricated, produced by others, or processed by the Contractor containing soy protein derivatives or poultry analogues shall be approved by the State prior to service.
- 48. Donated Food Items:** The Contractor may use donated food items when they are available, wholesome, and appropriate for menu purposes. The Contractor reserves the right to refuse acceptance of any such donated items that are contaminated or in excessive amounts. The Contractor must properly handle, store and prepare all donated food items.
- 49. Frequency of Meals:** The Contractor shall provide meals at least three (3) times per day with a minimum of two (2) hot meals per day. Regular meal times will be established with no more than fourteen (14) hours between the evening meal and the following day's breakfast meal. A meal schedule shall be specific to the needs of the facility but shall be mutually agreed upon by both the Contractor and the facility.

A sack lunch shall be provided to individuals who miss the service of the regularly scheduled meal. The sack lunch shall meet the nutritional needs of the individuals and shall be based on physician order if appropriate. This sack lunch will count towards meal count and not be a separate charge.

Snacks and nutritional supplements may be required by the facility and will be billed to the State at invoiced cost to the Contractor, excluding overhead and administrative costs.

Meal service times shall be established at least annually. The Contractor is responsible to have meals ready to serve during those times. Any deviations to the meal service times will be handled by the facility.

- 50. Menu Cycles:** Meals shall follow a menu cycle pre-approved by the facility administrator or designee with a minimum cycle length of three weeks. Cycle menus shall be changed a minimum of two times per year.
- 51. Menu Planning:** Menus shall be planned in accordance with the National Research Council's Recommended Dietary Allowances (RDA) to meet the nutritional needs of the individuals. The Dietary Guidelines for Americans and the Food Guide Pyramid shall serve as a basis for all menu planning to assure a variety of foods, maintenance or improvement of weight, adequate sources of essential nutrients and fiber, and appropriate amounts of fat, cholesterol, sugar, and salt/sodium. **Meals shall be prepared which meet nutrition standards and menu planning as specified in 42 CFR; §483.480(a)(1) as currently recommended by the Academy of Nutrition and Dietetics (AND). Contractor personnel responsible for the preparation of menus and will maintain a copy of these regulations to ensure proper menu planning is utilized in accordance with the Centers for Medicare and Medicaid Services to operate an ICF/IID.**

The menu shall be planned with institutional tested products and recipes for individual acceptability. A variety of food flavors, textures, temperatures, and appearances shall be used. The Contractor shall use the method to monitor resident preferences, and to make acceptable adjustments, as presented in the RFP proposal, or the Contractor must submit and obtain approval from the facility for an alternate method to monitor resident preferences prior to implementation.

The menu planning process shall include input from the facility to address the essential needs of the individuals served by the facility. All menus must be approved by the facility administrator or designee prior to implementation.

The Contractor will be required to utilize a menu planning software product that is compatible with the State facility's food service operations to meet the demands of the individuals served by the State.

52. Menu Review and Approval: The menus shall be reviewed and approved by a Registered Dietitian who is licensed by the State of South Dakota (or independently contracted with the Contractor) in order to ensure compliance with all of the above mentioned regulations and RDAs for age and gender of all groups. Approved menus shall remain as presented in that actual menu items are prepared as expected by the facility, i.e. if the menu calls for pure ground beef, it must be used unless a dietary substitute is requested or required by an individual.

53. Recipes and Production Standards: Standardized recipes and portion control shall be submitted and followed for all food preparation to ensure medical nutrition therapy, nutritional adequacy, and nutrient requirements. All recipes and production directions shall be in writing and followed implicitly to assure consistency of taste and quality in food products served. Production such as grilling, French frying, steam cooking, etc., of items shall be continuous through each meal period with large quantities prepared as close as possible to the time they will be served, while still maintaining quality and adequate stock to avoid delay in service. The Contractor shall ensure preparation of a sufficient quantity of food to meet the daily population estimates.

The State shall have free access to any and all records of recipes, production sheets, product specifications, and quantities of food issued each service unit.

54. Menu Modifications and Substitutions: Modifications in the menu will be made to accommodate medical nutrition therapy as prescribed by the physician/medical team for individuals. Modifications in the menu made to accommodate altered consistency needs for the individuals will be provided as prescribed by the medical team.

Documentation of all meals served, including substitutions, shall be maintained. A written method for food substitutions shall be maintained and shall be reviewed by a Registered Dietitian who is licensed in South Dakota to assure nutrient content of substituted foods is comparable. Food substitutions must be available to accommodate food avoidances due to religious beliefs/practices/observances and patient likes/dislikes in compliance with Medicare/Medicaid standards. Vegetarian food substitutions may be needed. Food allergies must also be accommodated and a substitution provided.

Modifications in menu will be made to accommodate religious diets.

There may be no more than two unapproved menu substitutions per week unless otherwise approved. Unapproved substitutions exceeding two per week will be subject to a \$1,000.00 penalty for each week. If the substitution is approved by the Administrator or designee prior to the substitution being made, liquidated damages do not apply.

55. Meal Preparation and Service: All meal preparation and service shall be supervised by a qualified food service director as described in Section 30.A to ensure quality, sanitation, texture, consistency, appearance, therapeutic modifications, and temperatures are adequate and maintained throughout preparation, service and delivery of food.

56. Holiday Meals: A minimum of eight holiday or special meals shall be served each year. Holiday meals shall be consistent with traditional meals prepared during each holiday and shall be approved by the facility administrator or designee prior to the menu cycle in which the holiday falls. Additional holiday or special meals may be requested by the facility and shall be determined by mutual agreement of the facility and the Contractor.

57. Processing of Complaints/Quality Assurance Plan: The Contractor shall provide a quality assurance plan that describes the complaint resolution process in place for addressing complaints from individual, and clearly describes how the Contractor will ensure the quality of the products and services being provided. If the facility has an existing process for complaint resolution and/or quality control, the Contractor shall work within that process to resolve complaints and/or quality issues.

58. Employee/Visitor Meals: The Contractor shall provide employee and visitor meals and must set a cost per meal of \$2.00. Any rate increases to employee/visitor meals must be approved by the facility administrator. The Contractor will be responsible for establishing and maintaining a system for collection of money for employee/visitor meals. The revenue derived from the employee and visitor meals at the facility should offset the cost per meal to the State.

59. Pricing: The pricing shall be based on two components. The first component shall consist of a fixed base monthly price of \$71,234.00. The second component shall consist of a price per meal based on midnight census at the rate of \$1.38. The State reserves the right to review, and if necessary, renegotiate the fixed base monthly price as a result of notification and approval of an alternate Contractor staffing plan by the facility, in accordance with Section 30, or as a result of any other circumstances that impact the economics related to the Contractor's food service operations at the facility.

For all items/services provided outside the normal meal service, Contractor will bill the State directly. Contractor will track the costs of such items and will provide a reconciliation to the facility on a quarterly basis.

60. Annual Pricing Adjustment: The State will calculate the annual pricing adjustment to the price per meal and the fixed base monthly price based upon the following factors:

- A. For the fixed base monthly price component, the price shall be adjusted by an inflationary factor consisting of the cost of living wage adjustment approved by the Legislature for State employees (hereby assumed to be 60%) and the Consumer Price Index (CPI) for the Midwest Urban Food Away from Home series (hereby assumed to be 40%).
- B. For the variable price per meal component, the price shall be adjusted by the change in the CPI (Consumer Price Index) for the Midwest Urban Food Away from Home series.
- C. Calculation based on the year prior to the year immediately preceding the year of adjustment.
- D. State reserves the right to utilize the inflation methodology identified in A and B above or 3% whichever is less.

61. Registered Dietitian Option: The State shall reserve the right and option to employ the Registered Dietitians (RDs) that would otherwise be provided by the Contractor under the contract. The State would assume all responsibilities and obligations for employing these positions as well as the work output. The prices per meal would be adjusted by the annual salaries paid to the RDs plus Contractor's fringe benefit rates divided by the number of meals served in the prior year.

62. Department of Human Services – SD Developmental Center Special Considerations:

Location of Facility/Types of Residents/Resident Headcount

The South Dakota Developmental Center (SDDC) is located in Redfield, SD and currently serves a total client population of 104 clients (24 females/80 males).

Nutritional Needs

Caloric Base/Diets

The menu at SDDC will have a general caloric base of 2000-2400 calories per day. Individuals receive regular diets or therapeutic diets served either by self-serve on tray-line or through tray delivery.

Calorie Modifications

Include, but are not limited to:

- 1900-2000 consistent carbohydrate;
- 1600-1800 consistent carbohydrate – low-calorie.

Therapeutic Modifications Needed

Therapeutic modifications are prescribed on an individual basis by physician order only and include, but are not limited to:

- a. Low fat/low cholesterol
- b. Protein controlled – 60 gm
- c. Diabetic – consistent carbohydrate or consistent carbohydrate – low calorie
- d. Bland
- e. Renal
- f. Low potassium

Consistency Modifications Needed

- a. Regular/Whole
- b. Chopped
- c. Mechanical Soft
- d. Ground
- e. Pureed
- f. Thickened Liquids
- g. Dysphagia

Other Considerations

- a. High fiber
- b. Food allergies
- c. Early/late trays
- d. Behavior trays
- e. Sick trays
- f. Sequential Diarrhea Diet
- g. Full liquid trays
- h. Clear liquid trays
- i. Tube feedings
- j. Fluid restrictions
- k. Sack lunches

Nourishments

Between meal nourishments and supplements are delivered on a weekly basis to individual living areas. Inventory is also taken on a weekly basis. Nourishments and supplements are delivered in bulk to the areas and stored in cupboards and refrigerated as required. 100% of the clients receive nourishments between meals and vary from one to four times per day depending on the individual. Bulk supplies are available on each dorm. Nourishments and supplements shall be billed back to the Facility at cost.

Regulatory and Funding Restrictions

SDDC is a Medicaid certified residential Intermediate Care Facility for Individual with Intellectual Disability (ICF/IID). SDDC is surveyed annually by the South Dakota Department of Health. In addition, SDDC is subject to surveys by the Centers for Medicare and Medicaid Services (CMS) on a periodic basis.

Available Labor

The State may offer food service learning opportunities to people receiving supports at SDDC. SDDC employees will provide direct supervision of these learning opportunities which may consist of dishwashing and dining area cleaning services in the central food service building. The schedule will be developed and approved by mutual agreement.

Special Considerations

Food is prepared and trayed at a central production kitchen. Food trays are then delivered to eight (8) dining areas, which may or may not be located in the Food Service Building. Approximately 92 to 99 clients pick up their meals in a self-serve line.

Each living area has the opportunity to requisition four meals from food service on a monthly basis. The meals can be breakfast, lunch, supper, birthday treats/cakes, picnics, etc. The meal is prepared for the living area and all modifications in therapeutic restrictions and consistency must be provided. Some foods that are not appropriate for some modifications will require a substitution item. Each requisition also requires a "diet list" that lists all of the individuals and what they are allowed.

In addition to the holiday meals, special attention is given to other holiday meals by providing cakes, cookies, or other treats. At Christmas, each unit of living areas has a large Christmas Party. Treats are also provided to each living unit for either Christmas Eve or Christmas Day.

Adaptive Feeding Equipment is provided to many of the clients at each meal. This equipment is placed on the trays for meal services. They include adaptive cups, plates, spoons, forks, and mats. The equipment is provided in order for the individuals to eat more independently.

A. The State and Contractor Shall Mutually Agree That:

1. All applicable health certifications will be maintained and the parties assure that all State and local regulations are being met by a Contractor preparing or serving meals at a State facility (42 C.F.R. § 483.460); 46:17:05:06
2. State and Contractor mutually agree that compliance with the following acts and regulations shall be maintained: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975;
3. State and Contractor mutually certify that prices in the offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition.
4. Contractor shall contact State should the Contractor request that the State/Contractor apply for and receive USDA Foods (commodities). Contractor and State mutually agree that USDA Foods (commodities) are not being utilized at SDDC.
5. This agreement involves Protected Health Information (PHI), therefore a Business Associate Agreement is attached and is fully incorporated herein as a part of the Agreement (see Appendix A).

Agreement # **4192-670-001 20**

Authorized Signatures: In witness hereto, the parties signify their agreement by affixing their signatures hereto.

DocuSigned by: <u>Mitch Possinger</u>	8/2/2019
Mitch Possinger, Founder & Managing Director, Cura Hospitality, LLC	Date
DocuSigned by: <u>Shawnie Rechtenbaugh</u>	7/31/2019
Shawnie Rechtenbaugh, Secretary, DHS	Date
DocuSigned by: <u>Denice Houlette</u>	7/31/2019
Denice Houlette, Director of Budget and Finance, DHS	Date

Approved Contract 07/31/2019

Company	<u>1000</u>	<u>2003</u>	<u>3046</u>	<u> </u>
Account	<u>520470000</u>	<u>520470000</u>	<u>520470000</u>	<u> </u>
Center Req	<u>1911025</u>	<u>1911025</u>	<u>1911025</u>	<u> </u>
Center User	<u>J0208</u>	<u>J0208</u>	<u>J0208</u>	<u> </u>
Dollar Total	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SVCPO Code	<u>2021</u>	<u>2022</u>	<u> </u>	<u> </u>

Agreement 4192-670-001 20
 PO#
 Vendor # 12548705
 Group

Appendix A HIPAA Business Associate Agreement

A. Definitions of Terms

1. Agreement means the agreement to which this Business Associate Agreement is attached to including this attachment entitled HIPAA Business Associate Agreement.

2. Business Associate shall have the meaning given to such term in 45 C.F.R. section 160.103 and 42 U.S.C. section 17938, and in reference to the party of this agreement, shall mean the Provider, Consultant, or other entity contracting with the State of South Dakota, Department of Human Services as set forth more fully in the Agreement this Business Associate Agreement is attached.

3. C.F.R. shall mean the Code of Federal Regulations.

4. Department shall mean South Dakota Department of Human Services

5. Designated Record Set shall have the meaning given to such term in 45 C.F.R. section 164.501.

6. Covered Entity shall have the meaning given to such term in 45 C.F.R. section 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Human Services.

7. Protected Health Information or PHI shall have the meaning given to such term in 45 C.F.R. section 164.103 and section 164.501, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

8. Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, Subparts A and C, 45 CFR 164.314, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009) as it directly applies, as in effect on the date of this Business Associate Agreement.

B. Obligations of the Business Associate.

1. Security Safeguards. The Business Associate shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized use or disclosure of PHI, and that reasonably protect the confidentiality, integrity, and

availability of any electronic Protected Health Information that it creates, receives, maintains or transmits to or on behalf of Covered Entity as required by the Regulations. The Business Associate agrees to comply with the requirements of the Privacy and Security Rules directly applicable to Business Associates including the HITECH Act.

2. Affiliates, Agents, Subsidiaries and Sub-Contractors. The Business Associate shall require that any agents, employees, affiliates, subsidiaries or sub-contractors, to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Department agree in writing to the same use and disclosure restrictions imposed on the Business Associate by this Agreement.

3. Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon notice to the Business Associate, the Business Associate shall report to the Department any uses or disclosures of PHI not authorized by this Agreement. The Business Associate shall also notify the affected individual of the breach. If the breach affects more than 500 individuals, the Business Associate must contact the U.S. Health and Human Services Secretary and the media, under the American Recovery and Reinvestment Act of 2009. The Business Associate shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice provided to the Department by the Business Associate regarding unauthorized uses and/or disclosures of PHI, the Business Associate shall describe the remedial or other actions undertaken or proposed to be undertaken regarding the unauthorized use or disclosure of PHI.

4. Permitted Uses and Disclosures. The Business Associate may not use or disclose PHI received or created pursuant to this Agreement except as follows:

(a) The Business Associate's Operations – Permitted Uses of PHI. The Business Associate may use the PHI it receives in its capacity for the proper management and administration of the Business Associate or to carry out the Business Associate's legal responsibilities.

(b) The Business Associate's Operations – Permitted Disclosures of PHI. The Business Associate may disclose the PHI it obtains in its capacity as a Business Associate if such disclosure is necessary for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, and:

(i) The disclosure is required by law; or

(ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person or entity notifies the Business Associate (and the Business Associate in turn notifies the Department) of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Disclosure Accounting. In the event that the Business Associate makes any disclosures of PHI related to the business associate function under this Agreement that are subject to the accounting requirements of 45 C.F.R. section 164.528, the Business Associate promptly shall maintain a record of each disclosure, including the date of the disclosure, the name and if available, the address of the recipient of the PHI, a brief description of the PHI disclosed and a brief description of the purpose of the disclosure. The Business Associate shall maintain this record for a period of six (6) years and make available to the Department upon request in an electronic format so that the Department may meet its disclosure accounting obligations under 45 C.F.R. section 164.528.

6. Access to PHI by Individuals. The Business Associate shall cooperate with the Department to fulfill all requests by individuals for access to the individual's PHI that are approved by the Department. The Business Associate shall cooperate with the Department in all respects necessary for the Department to comply with 45 C.F.R. section 164.524. If the Business Associate receives a request from an individual for access to PHI that affects funding eligibility, the Business Associate immediately shall forward such request to the Department within (10) business days. The Department shall be solely responsible for determining the scope of PHI and Designated Record Set to be released with respect to each request by an individual to access or obtain copies of the individual's PHI covered by this Agreement and in accordance with C.F.R. 164.524. The Business Associate shall make the PHI available in the format requested by the individual and approved by the Department, unless the PHI is not readily producible in such format, in which case the PHI shall be produced in hard copy format.

7. Access by the Department to the Business Associate's Books and Records. The Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Department available to the Department and the Secretary of the Department of Health and Human Services for purposes of determining the Department's compliance with the HIPAA laws and regulations. Upon reasonable notice to the Business Associate and during the Business Associate's normal business hours, the Business Associate shall make such internal practices, books and records available to the Department to inspect for purposes of determining compliance with this Agreement.

8. Amendment of PHI. As directed and in accordance with the time frames specified by the Department, the Business Associate shall incorporate all amendments to PHI received from the Department. The Business Associate shall provide written notice to the Department within ten (10) business days confirming that the Business Associate has made the amendments to PHI as directed by the Department. This confirmation shall also contain any other information that may be necessary for the Department to provide adequate notice to the individual in accordance with 45 C.F.R., section 164.526. The Department warrants that all time frames specified will be made

in good faith and reasonable length so that the Business Associate can comply with the timeframe.

C. Obligations of the Department

1. The Department shall notify Business Associate of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

2. The Department shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect Business Associates use or disclosure of PHI.

3. The Department shall notify Business Associate of any restriction to use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

D. Term and Termination.

1. Term. The term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner

2. Termination by Breach. The Department may immediately terminate the primary Agreement this Business Associate Agreement is attached to if the Business Associate has breached a material term of this Business Associate Agreement. Alternatively, the department may choose to

(i) provide Business Associate with five (5) days written notice of the existence of an alleged material breach; and

(ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Department within five (5) days.

Business Associate's failure to cure shall be grounds for immediate termination of the primary Agreement to which the Business Associate Agreement is attached. Department's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other. However, in the event that the Department determines that termination of the Agreement is not feasible, the Department shall have the right to report the breach to the Secretary of the Department of Health and Human Services, notwithstanding any other provisions of this Agreement to the contrary.

3. Effects of Termination; Disposal of PHI. Upon termination of the primary Agreement to which this Business Associate Agreement is attached, the Business Associate shall recover all PHI that is in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors. The Business Associate shall return to the Department or destroy all PHI that the Business Associate obtained or maintained pursuant to this Agreement on behalf of the Department. If the parties agree at that time that the return or destruction of PHI is not feasible, the Business Associate shall extend the protections provided under this Agreement to such PHI, and limit further use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the Business Associate to recover all PHI in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors, the Business Associate shall provide written notice to the Department regarding the nature of the unfeasibility and the Business Associate shall require that its agents, affiliates, subsidiaries and sub-contractors agree to the extension of all protections, limitations and restrictions required of the Business Associate hereunder.

E. Miscellaneous.

1. The Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by the Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Business Associate's own purposes or that any information in the Business Associate's possession or control, or transmitted or received by the Business Associate, is or will be secure from unauthorized use or disclosure. The Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

2. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify the Business Associate of any actions it reasonably deems are necessary to comply with such changes, and the Business Associate promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Business Associate may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.

3. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of the Department. The Department may assign its rights and obligations under this Agreement to any successor or affiliated entity.

4. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Business Associate in the fulfillment of its obligations under this Agreement, available to the Department, at no cost to the Department, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Department, its directors, officers, or employees, except where the Business Associate or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

The Department shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Department in the fulfillment of its obligations under this Agreement, available to the Business Associate, at no cost to the Business Associate, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Business Associate, its directors, officers, or employees, except where the Department or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

6. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA rules.

7. Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the primary Agreement to which Business Associate Agreement is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.
